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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

RON THAYER as PERSONAL REPRESENTATIVE for the ESTATE OF TUCKER THAYER, Plaintiff, vs. WASHINGTON COUNTY SCHOOL DISTRICT, CITY OF ST. GEORGE, ROBERT GOULDING, MICHAEL EATON, STACY RICHAN, DAVID AMODT, JOHN and JANE DOES I–X, ABC CORPORATIONS I–X, and XYZ PARTNERSHIPS I–X, Defendants.	**COMPLAINT** JURY DEMANDED Civil No. 2:10-cv-01037-TS Judge Ted Stewart

Plaintiff Ron Thayer, as Personal Representative for the Estate of Tucker Thayer ("Tucker's Estate" or the "Estate"), by and through the law offices of GALLIAN, WILCOX, WELKER, OLSON & BECKSTROM, L.C., for his Complaint against Defendants avers as follows.

JURISDICTION AND VENUE

1. Plaintiff Ron Thayer, a Utah resident, is the Personal Representative of the Estate of Tucker Thayer.

2. On information and belief, Defendant Washington County School District ("District") is a political subdivision of the State of Utah, operating in Washington County, Utah, and is subject to the jurisdiction of this Court.

3. On information and belief, Defendant City of St. George ("St. George") is a political subdivision of the State of Utah, operating in Washington County, Utah, and is subject to the jurisdiction of this Court.

4. On information and belief, Defendant Robert Goulding ("Mr. Goulding") is a resident and domiciliary of Washington County, Utah, and is subject to the jurisdiction of this Court.

5. On information and belief, Defendant Michael Eaton ("Mr. Eaton") is a resident and domiciliary of Washington County, Utah, and is subject to the jurisdiction of this Court.

6. On information and belief, Defendant Stacy Richan ("SRO Richan") is a resident and domiciliary of Washington County, Utah, and is subject to the jurisdiction of this Court.

7. The conduct complained of herein occurred in Washington County, Utah.

8. This action arises under a federal statute, to wit, 42 U.S.C. § 1983 (2009). As such, jurisdiction in this Court is proper and is predicated on 28 U.S.C. § 1331.

9. Venue in this Court is proper and is predicated on 28 U.S.C. § 1391(b)(1)–(2).

10. Plaintiff is entitled to have this matter tried to a jury, and hereby demands the same.

GENERAL FACTUAL ALLEGATIONS

11. Tucker Thayer ("Tucker") was a fifteen-year-old child who was shot and killed with a handgun loaded with blanks on November 15, 2008, at his school, Desert Hills High School ("Desert Hills").

12. However, unlike other tragic shootings that have occurred at other schools in the past, the handgun that killed Tucker Thayer was at the school with the knowledge and support of the school's employees and administration as well as the local police department.

13. Desert Hills is a secondary school owned and operated by Defendant District in St. George, Utah.

14. The District opened Desert Hills for the 2008 school year, giving Tucker the opportunity to attend high school in his own neighborhood, near his home.

15. Tucker was an energetic and creative boy, and in order to develop his talents and abilities, Tucker became involved with the theater program at Desert Hills.

16. Mr. Eaton was Tucker's theater teacher and an employee of the District.

17. When the school and theater program undertook to produce the musical "Oklahoma" ("the play") during the fall of 2008, Tucker was excited to participate as a stage technician under the direction of Mr. Eaton.

18. Possibly to give the play a sense of realism and drama, Mr. Eaton decided to use a real handgun in the play, but not as an on-stage prop. Mr. Eaton wanted to actually fire a handgun, loaded with a blank round, in the theater as a sound effect.

19. Before following through with his plan, Mr. Eaton consulted with the in-house representative of the St. George Police Department, School Resource Officer Stacy Richan.

20. The St. George Police Department ("SGPD") is a political subdivision wholly controlled and operated by Defendant St. George.

21. SRO Richan approved Mr. Eaton's plan to use a handgun firing blank rounds on school property.

22. SRO Richan never asked to inspect the weapon prior to allowing its use on campus.

23. The gun ("the gun" or "the handgun") Mr. Eaton decided to use for the performance belongs to Mr. Amodt, whose daughter was the student stage manager of the play.

24. The gun was a Smith & Wesson .38 caliber, six-shot revolver capable of being fired either by a single action trigger pull or by a double action trigger pull, and was fully capable of firing live .38 caliber ammunition rounds.

25. In addition, the gun had been altered from its factory specifications to give it a "hair trigger," reducing by half the amount of force required to pull the trigger, whether a single or double action trigger pull.

26. The modifications of the gun caused it to sometimes jam when the double action trigger pull was used to fire the gun.

27. The only way to reliably fire the gun without it jamming was to cock the hammer and engage the single trigger pull.

28. With the trigger thus cocked, the only thing preventing the gun from firing was the modified single action hair trigger.

29. Mr. Goulding also knew about and consented to the use of the gun on school grounds.

30. After Mr. Eaton spoke to SRO Richan regarding using the gun during the play, SRO Richan approached Mr. Goulding and told him about his (SRO Richan's) conversation with Mr. Eaton. SRO Richan told Mr. Goulding that he (SRO Richan) had authorized the gun to be used during the play.

31. Mr. Goulding agreed with SRO Richan and consented to the use of the gun during the play.

32. SRO Richan also told Mr. Goulding that he had spoken to superiors at SGPD regarding the use of the gun during the play.

33. Mr. Amodt's wife also spoke with Mr. Goulding on or about November 5, 2008, in order to make sure that the school would not be placed in "lockdown" based on the presence of the gun on school property.

34. In response to Mrs. Amodt's questions, Mr. Goulding confirmed that he consented to the use of the gun for the production of the play.

35. Like SRO Richan, Mr. Goulding did not inspect the gun.

36. Neither SRO Richan, nor Mr. Goulding, nor Mr. Eaton ever required the cast of the play to participate in safety training with regard to the handgun.

37. Upon information and belief, no one from the District or SGPD discussed with the cast members the dangers of using the gun; nobody from the District or SGPD taught the students the dangers associated with the blanks that would be fired from the gun; nobody from the District or SGPD told the cast members that it was illegal for children under eighteen years old to possess or use handguns; nobody from the District or SGPD explained to the students any rules regarding the safekeeping of the handgun; nobody from the District or SGPD explained to the students where the

gun was to be stored; and nobody from the District or SGPD informed the students that they were not to handle or shoot the gun.

38. Furthermore, SRO Richan, Mr. Goulding, and Mr. Eaton never informed the parents of the students involved in the play that a "dangerous weapon," as defined by Utah Code Ann. § 76-10-501(5) (2009), was going to be used in the play.

39. No one from the District and/or SGPD obtained written permission from the students' parents authorizing their children to be involved in the play when a dangerous weapon would be part of the play.

40. Tucker's parents, Ron and Cathie Thayer (the "Thayers"), never gave permission to the school to allow Tucker to possess, handle and/or shoot the gun during the rehearsals and/or the performances of the play.

41. SRO Richan, Mr. Goulding, Mr. Eaton and Mr. Amodt each failed to implement and enforce any rules governing the handling and use of the gun.

42. Instead of having an adult bring the gun to school, Mr. Amodt often entrusted his minor daughter, Sarah, with the responsibility of carrying the gun to school in her backpack.

43. Prior to one of the rehearsals for the play, Mrs. Amodt accompanied her daughter, Sarah, to the school while Sarah carried the gun and blank ammunition into the school in her backpack.

44. As Mrs. Amodt and Sarah were walking into the school, they met SRO Richan, who was leaving the building to do "bus duty."

45. Mrs. Amodt approached SRO Richan and introduced herself, stating that the gun was in her daughter Sarah's backpack.

46. She then asked SRO Richan if he wanted to inspect the gun and SRO Richan declined.

47. During her discussion with SRO Richan, Mrs. Amodt asked SRO Richan if she needed to check in at the office when she brought the gun onto school grounds. SRO Richan told her that so long as the gun stayed inside the backpack, she did not have to check in at the office.

48. Mrs. Amodt then asked if she needed to accompany her daughter Sarah and the gun into the theater room for rehearsal. SRO Richan told her that as long as the gun was in Sarah's backpack, she (Mrs. Amodt) did not have to accompany her daughter to the rehearsal.

49. Based upon SRO Richan's comments, Mrs. Amodt sent Sarah alone into the school with the handgun, turned around, and accompanied SRO Richan out to the parking lot where she then left in her car.

50. Thus, SRO Richan expressly allowed Sarah, a minor, to carry the handgun onto school property in her backpack; and allowed the handgun to be handled, and fired during the rehearsal, by a minor student, Tucker Thayer.

51. Moreover, instead of having constant adult supervision over the gun, it was left, in its lock box, unattended in the sound booth. Indeed, Mr. Eaton later acknowledged that the gun was simply "brought in and kept in [Mr. Amodt's daughter's] backpack under the soundboard."

52. Instead of having constant adult supervision and control over the "blanks" that were to be fired in the gun, blank rounds were also left in the sound booth, unattended, before each rehearsal and/or performance.

53. Instead of having an adult shoot the gun, Tucker was allowed to shoot the gun during the last two weeks of rehearsals leading to the opening of the play and during each of the performances of the play.

54. Tucker shot the gun during rehearsals and performances because Tucker knew the play and knew when to shoot the gun.

55. During most of the time that Tucker fired the handgun during rehearsals and/or performances, he did so without adult supervision and, indeed, with no adult present.

56. Tucker was under the impression that shooting the gun was his "job." In an interview Tucker gave the day before his death, he said that his "job basically is to run the spotlight and shoot the gun during all of the major shooting scenes."

57. Tucker had control of the weapon, and even played with the gun and its "blanks," without any adult supervision during both rehearsals and performances.

58. Students saw Tucker point the gun at other students and even at himself, pretending to shoot in a joking and kidding manner.

59. Indeed, Tucker had complete control and access of the gun at almost all times during rehearsals and performances. He knew the combination of the lock box in which the gun was brought to school.

60. He was once observed by students removing the gun from the lock box, handing it to another student to see and hold, then taking the gun back and returning it to the lock box.

61. Mr. Eaton knew that Tucker had access to and control of the gun and had been firing the weapon during rehearsals and performances, but he took no action to stop him from hurting himself or anyone else.

62. Indeed, Mr. Eaton encouraged Tucker's use of the gun. In at least one instance when the gun was fired on cue, Mr. Eaton told the stage manager, by two-way radio, "that was great! [Mr.

Amodt] is my new best friend!" The stage manager replied by radio, "That was Tucker." Mr. Eaton responded, "tell him he is my new favorite student."

63. Even prior to the play, it was apparent that the gun had not been used in a responsible manner. Specifically, on at least one occasion during rehearsals the cue to fire the gun was missed. Later, the blank was fired unexpectedly in a different scene, which caused the actor playing the role of "Judd" to flinch while he was supposed to be dead, evoking laughter from cast members.

64. No adult ever followed up to see why the cue had been missed, who missed the cue, and why the gun was fired later, at an inappropriate time.

65. Instead, the gun and ammunition continued to be left at the school during rehearsals and performances in Tucker's control and without adult supervision.

66. A few days prior to November 15, 2008, the gun with three blanks was brought to the school, but the stage manager reported that the three blanks were missing. Mr. Amodt then brought three additional blanks to the play so the gun could be fired.

67. No adult followed up to investigate what happened to the missing blanks.

68. On November 15, 2008, the gun and three blanks were left in the sound booth without any adult supervision.

69. After overhearing a conversation between Tucker and another student in the sound booth, an adult became concerned that Tucker might be planning a practical joke with the gun, such as firing the gun at an inappropriate point in the play. However, nothing was said to Tucker, and the gun was left in the sound booth without adult supervision.

70. Soon thereafter, the gun was discharged near Tucker's head.

71. No adult was present in the sound booth when the gun discharged.

72. At the time Tucker was shot, Mr. Amodt was in the "green room" (Mr. Eaton's office) showing student actors images of prior performances.

73. Mr. Eaton was also not in the sound booth at the time Tucker was shot. Instead, he was near or on the stage preparing for that night's performance.

74. The muzzle blast from the live blank drove skull fragments into Tucker's brain.

75. In addition, a "blowback" wound of approximately three inches in diameter was formed as the result of gases produced by the explosion of the gun powder exiting from the same hole they entered after being driven into Tucker's brain.

76. Tucker died later that night.

77. The District's "Safe Schools Policy" imposes mandatory suspension or expulsion for any student who has "possession, control, or actual or threatened use of a real weapon, explosive, or noxious or flammable material" or who makes any "actual or threatened use of a look alike weapon" on school property or at school activities.

78. Upon information and belief, despite the "Safe Schools Policy," schools in the District repeatedly have permitted guns of various kinds at various school activities, creating a custom of waiving or disregarding the policy.

79. Upon information and belief, the District and SGPD have ignored the obvious need, and have failed, to train its schools' staffs, administrators, and resource officers on compliance with laws and policies, and on the use of handguns at extra-curricular activities, and on the dangers of all weapons and of the discharge of blank rounds.

80. As the direct and proximate result of Defendants' conduct, Plaintiffs have incurred additional special and general damages, including, without limitation, damages for pain, suffering,

loss of Tucker's time and earnings, loss of Tucker's support, loss of Tucker's assistance and service to the family, and loss of Tucker's society, companionship, and happiness of associations, each of which Plaintiffs are entitled to recover.

81. On information and belief, Mr. Eaton and Mr. Goulding each are agents and/or employees of Defendant District.

82. On information and belief, all conduct of Mr. Eaton and Mr. Goulding complained of herein was performed in the scope of their respective employment for Defendant District.

83. On information and belief, SRO Richan is an officer, agent, and/or employee of Defendant District and/or SGPD, which is a department of Defendant St. George.

84. On information and belief, all conduct of SRO Richan complained of herein was performed in the scope of his employment for Defendant District and/or SGPD, which is a department of Defendant St. George.

85. Defendants' conduct manifests knowing and reckless indifference toward, and a disregard of, the rights of others, including Tucker.

FIRST CAUSE OF ACTION
Deprivation of Substantive Due Process Rights (42 U.S.C. § 1983)—Against the District, SGPD, Messrs. Goulding and Eaton, and SRO Richan

86. Plaintiff reasserts all other allegations contained in this Complaint and incorporates them herein as if set forth in full.

87. The District and SGPD failed to provide SRO Richan, Mr. Goulding and Mr. Eaton with any specific training regarding the use of guns at school activities, the proper safekeeping and inspection of guns, and the identification of dangers of different kinds of guns and the discharge of blank rounds.

88. The need for SRO Richan, Mr. Goulding, and Mr. Eaton to receive training specific to their duties at Desert Hills was obvious.

89. SRO Richan's, Mr. Goulding's, and Mr. Eaton's lack of training regarding the use of dangerous weapons at school activities was likely to, and did in fact result in, the injury complained of herein.

90. The District's and SGPD's failure to train SRO Richan, Mr. Goulding, and Mr. Eaton constitutes a deliberate indifference toward the safety and needs of Plaintiff.

91. The District's and SGPD's failure to train SRO Richan, Mr. Goulding, and Mr. Eaton constitutes a custom and/or policy which deprived Tucker of substantive due process.

92. As a direct and proximate cause of the District's and SGPD's failure to train SRO Richan, Mr. Goulding, and Mr. Eaton, Tucker was deprived of substantive due process and suffered damages for which his Estate is entitled to recover.

SECOND CAUSE OF ACTION
Deprivation of Procedural Due Process Rights (42 U.S.C. § 1983)—Against the District, SGPD, Messrs. Goulding and Eaton, and SRO Richan

93. Plaintiff reasserts all other allegations contained in this Complaint and incorporates them herein as if set forth in full.

94. The District, St. George, through SGPD, Mr. Goulding, Mr. Eaton, and SRO Richan allowed Tucker to possess and use a dangerous weapon without receiving training.

95. Furthermore, Tucker was never advised by the District, St. George, through SGPD, Mr. Goulding, Mr. Eaton, or SRO Richan of the potential for death or serious injury if the handgun were mishandled, nor was he advised by any Defendant of the danger posed by blanks at close range.

96. Each Defendant failed to advise Tucker of state law or district policy regarding firearms and further failed to afford him any procedures to comply with such law or policy.

97. Tucker, a minor, was permitted by the District, St. George, through SGPD, Mr. Goulding, Mr. Eaton, and SRO Richan to possess and use a dangerous weapon contrary to state law and school policy.

98. The District, St. George, through SGPD, Mr. Goulding, Mr. Eaton, and SRO Richan deprived Tucker of his right to life without affording him any procedure to protect himself.

99. As a direct and proximate result of each Defendant's actions violating Tucker's procedural due process rights, Tucker has suffered damages for which his Estate is entitled to recover.

THIRD CAUSE OF ACTION

Deprivation of Due Process, Creation of the Danger (42 U.S.C. § 1983)—Against the District, SGPD, Messrs. Goulding and Eaton, and SRO Richan

100. Plaintiff reasserts all other allegations contained in this Complaint and incorporates them herein as if set forth in full.

101. Defendants the District, St. George, through SGPD, Mr. Goulding, Mr. Eaton, and SRO Richan created the danger that ultimately killed Tucker by, without limitation, allowing the use of the gun in the play, storing the gun in a place where minors had easy access to the gun, failing to train the minors involved with the play about safe practices for being around the handgun and the applicable laws, policies, and procedures for use of the gun, entrusting Tucker with the possession and use of the gun during the play, failing to supervise Tucker while he was in control of the gun, failing to implement or enforce the statutes, policies, and procedures that had been adopted regarding the use of such dangerous weapons by minors, and specifically with respect to the use of

the handgun in the play, failing to train their own personnel regarding handguns and blanks, and failing to notify the students' parents, including the Thayers, of the gun's use in the play.

102. Tucker, as a student participating in the play, was a member of a limited and specifically identifiable group.

103. Each Defendant's actions in allowing Tucker to possess and use a handgun without notifying the Thayers put Tucker at substantial risk of serious, immediate, and proximate harm.

104. The risk of harm was known by and was obvious to each Defendant.

105. Each Defendant acted recklessly in allowing Tucker to possess and use the handgun during theatrical performances and all Defendants consciously disregarded the risk that an untrained minor in possession of a handgun could injure himself or others.

106. When viewed in total, each Defendant's conduct in allowing Tucker, a minor, to possess and fire a handgun without supervision and without parental notification during a theatrical performance shocks the conscience.

107. As a direct and proximate result of each Defendant's conduct in creating the danger, Tucker has suffered damages for which his Estate is entitled to recover.

FOURTH CAUSE OF ACTION
Deprivation of Right to Familial Association (42 U.S.C. § 1983)—Against the District, SGPD, Messrs. Goulding and Eaton, and SRO Richan

108. Plaintiff reasserts all other allegations contained in this Complaint and incorporates them herein as if set forth in full.

109. The District, St. George, through SGPD, Mr. Goulding, Mr. Eaton, and SRO Richan deprived Plaintiff of his right to familial association by allowing Tucker, while he was alive, to possess and use the gun, which resulted in his death.

110. Each Defendant's deliberate indifference and extreme recklessness in allowing Tucker to possess and use the gun reflects an intent to interfere with Tucker's right to a familial relationship.

111. As a direct and proximate result of each Defendant's actions, Tucker suffered damages for which his Estate is entitled to recover.

FIFTH CAUSE OF ACTION
Deprivation of Right While Under Special Relationship (42 U.S.C. § 1983)—Against the District, SGPD, Messrs. Goulding and Eaton, and SRO Richan

112. Plaintiff reasserts all other allegations contained in this Complaint and incorporates them herein as if set forth in full.

113. The District, St. George, through SGPD, Mr. Goulding, Mr. Eaton, and SRO Richan created a dangerous situation for Tucker and the students, faculty, staff and visitors at Desert Hills by allowing Tucker to possess and use a dangerous weapon at a school activity.

114. Therefore, each Defendant had a duty to strictly control Tucker's freedom to act while he possessed and used the gun in order to ensure his safety and the safety of others.

115. As a matter of public policy, the District, St. George, through SGPD, Mr. Goulding, Mr. Eaton, and SRO Richan's duty to exercise strict control over Tucker created a special relationship between each Defendant and Tucker and thus invoked the protections of the Due Process Clause.

116. As a direct and proximate result of each Defendant's conduct in creating a special relationship with Tucker and then failing to protect him, Tucker suffered damages for which his Estate is entitled to recover.

SIXTH CAUSE OF ACTION

Deprivation of Right to Equal Protection (42 U.S.C. § 1983)—Against Defendants the District, SGPD, Messrs. Goulding and Eaton, and SRO Richan

117. Plaintiff reasserts all other allegations contained in this Complaint and incorporates them herein as if set forth in full.

118. Students at Desert Hills were intentionally treated differently than other students by the District, St. George, through SGPD, Mr. Goulding, Mr. Eaton, and SRO Richan, in that a fully functioning handgun was permitted on campus, to be used by the cast members of the play, without supervision, and without parental consent.

119. Tucker, as stage technician, was intentionally singled out by Defendants as the student to fire the handgun.

120. Defendants' act of allowing Tucker to possess and use the handgun in the play was not rationally related to any legitimate government purpose or end.

121. As a direct and proximate result of Defendants' actions in violation of Tucker's right to equal protection, Tucker suffered damages for which his Estate is entitled to recover.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ron Thayer, as Personal Representative of the Estate of Tucker Thayer, respectfully request that this Court enter judgment against each defendant complained against herein as follows:

A. For general compensatory damages in a reasonable amount to be determined by the trier of fact.

B. For special, consequential, and incidental damages in reasonable amounts to be determined by the trier of fact.

C. For punitive and exemplary damages in reasonable amounts to be determined by the trier of fact based upon each defendant's willful and malicious or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward and a disregard of, the rights of others, as may be allowed by law.

D. For prejudgment interest on the damages assessed by the verdict as may be allowed by law.

E. For Plaintiffs' costs and reasonable attorney fees incurred herein as may be allowed by law, including 42 U.S.C. § 1988(b).

F. For any further relief that this Court may deem just and equitable under the circumstances.

DATED this 15 day of October, 2010.

GALLIAN, WILCOX,
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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

N/A.

Secretary